



SELECTED LEGISLATION
from the
2005 Regular Session
and the
2005 First Extraordinary Session
of the
Louisiana Legislature

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2005 REGULAR SESSION

I. CIVIL LAW AND PROCEDURE

A. SUBSTANTIVE, LIABILITY, AND DAMAGES

1. Kostelka (SB 258)

Act No. 1

Clarifies the liability of the state, state agencies, or political subdivisions of the state under the La. Governmental Claims Act by providing that the total liability **for all damages for personal injury or wrongful death to any one person**, including all claims and derivative claims, exclusive of property damages, medical care and related benefits and loss of other economic damages, shall not exceed \$500,000, regardless of the number of suits filed or claims made for the personal injury to that person.

Explains the original intent of the legislature, notwithstanding the contrary interpretation by the La. Supreme Court in *Lockett v. the State of Louisiana. Department of Transportation and Development*, 2003-1767 (La. 2/25/04) 869 So 2d 87. Applies to all claims arising on and after May 27, 2005.

Effective upon signature of the governor (May 27, 2005). (Amends R.S. 13:5106(B)(1) and (2))

2. St. Germain (HB 278)

Act No. 51

Clarifies that the existing exemption from liability for damages arising from motorized off-road activities includes vehicles with combustion engines **or electric motors**, whether or not the vehicle is required to be registered to operate upon state highways, and whether or not the race course is **paved or unpaved**.

Effective August 15, 2005. Amends R.S. 9:2795.4(A)(3), (4)(a), and (6))

3. Trahan (HB 425)

Act No. 480

Provides that public and private general **hospitals and their personnel** who provide services in good faith to persons suffering from mental illness and substance abuse pursuant to **civil commitments** (admissions by emergency certificate of physician or psychologist or commitments by the coroner or a court of competent jurisdiction) **shall not be liable** for damages suffered by the patient as a result of the commitment or damages caused by the patient during the term of the commitment.

Adds public and private general hospital personnel within the existing limitation which provides that any licensed physician or psychologist exercising that degree of skill and care ordinarily employed shall not be held civilly liable or subject to criminal prosecution for acts arising from his professional opinions, judgments, actions, or duties pursuant to civil commitment procedures.

Excludes from the limitation of liability damages or injuries caused by **willful or wanton** negligence or **gross misconduct**, and provides that the limitation shall apply only to public and private general hospital personnel who have received training in nonviolent crisis intervention within the preceding 12-month period.

Codifies the decision in *Romero v. Charter Behavioral Health System of Lake Charles*, 780 So.2d 530 (La. App. 3 Cir. 2001).

Effective August 15, 2005. (Amends R.S. 28:63(A) and (C); Adds R.S. 28:53(N) and (O), 53.2(G), and 54(E))

B. MEDICAL MALPRACTICE

1. Lentini (SB 184)

Act No. 127

Provides several procedural changes relative to medical review panels in malpractice claims against a state or a private health care provider, including requiring notification by **certified mail** of the filing of a request for review or by subsequent **first class mail** if the certified mail is not claimed or is undeliverable.

Relative to a request for review of a claim against a health care provider **not covered** by the state or private medical malpractice acts, extends the time in which suit must be instituted from 60 to 90 days following notification by certified mail that the health care provider is not covered by the state or private medical malpractice acts.

Limits the time in which the panel must render its opinion to 30 days after reviewing all of the evidence.

Repeals provisions which provided that when a review panel was unable to complete its duties within 180 days, the board or either party was authorized to petition the court to dissolve the panel, and repealed the provision which provided that the suspension of the running of prescription to file suit ceased 60 days after receipt of the final order dissolving the panel.

Effective August 15, 2005. (Amends R.S. 40:1299.39.1(A)(1)(e), (2)(a), (3)(a), and (4)(intro para) and (G)(intro para) and 1299.47(A)(1)(e), (2)(a), (3)(a), (c) and (4)(intro para), (G)(intro para), (L) and (M); repeals R.S. 40:1299.47(K))

C. PRESCRIPTION AND PEREMPTION

1. Bowler (HB 308)

Act No. 213

Existing law (C.C. Art. 3549) relative to **conflict of laws**, provides in part that when the substantive law of Louisiana is applicable to the merits of a claim brought in this state, the **prescription and peremption** laws of Louisiana are also applicable.

Act 213 retains existing law and adds an exception regarding the application of Louisiana's prescription and peremption law: if the substantive law of another state is applicable to an action brought in Louisiana and the action is brought by or on behalf of any person who at the time the cause of action arose, neither resided in nor was domiciled in Louisiana, and the action would be barred by a statute of limitation or repose or by a substantive law of prescription or peremption of the other state, the action shall be barred in Louisiana.

Effective August 15, 2005. (Amends C.C. Art. 3549)

D. PROCEDURAL LAW

1. R. Carter (HB 686)

Act No. 28

Changes the time for filing of the **bond for costs** related to a **civil jury** from not later than 30 days to not later than 60 days prior to trial, and changes the time for mailing the jury summons from 15 days to 30 days prior to the date on which the addressee is summoned to appear.

Effective August 15, 2005. (Amends C.C.P. Art. 1734(A) and R.S. 13:3044(B)(5)(b)(ii))

2. Gallot (HB 226)

Act No. 205

Upon recommendation of the Louisiana State Law Institute, adds that parties may request written reasons for judgment in **class action** certification proceedings and that a devolutive or suspensive appeal may be taken as a matter of right.

Specifies that a request for written reasons for judgment and findings of fact must be made not later than 10 days after the **mailing of the notice** of the signing of the judgment.

Clarifies that the filing of the ex parte motion to **revive a money judgment** interrupts prescription.

Provides that a **final judgment is appealable** in all causes in which appeals are given by law whether rendered after hearing, by default, or by reformation, and that an interlocutory judgment is appealable only when expressly provided by law (Prior law required irreparable injury).

Effective January 1, 2006. (Amends C.C.P. Arts. 592(A)(3)(b), 1917, 2031(A), and 2083)

3. Marionneaux (SB 212)

Act No. 302

Requires that, at the time of posting **bond for a civil jury trial**, the party praying for the jury shall pay \$150 as jury filing fees.

Effective August 15, 2005. (Amends R.S. 13:3049(B)(2)(a))

4. Tucker (HB 81)

Act No. 409

Provides that an order for custody for **admission to a treatment facility** shall include a statement that requires the law enforcement officer to take **reasonable and necessary precautions** for his protection as well as the person being taken into custody, including the use of crisis intervention techniques.

Effective on August 15, 2005. (Adds R.S. 28:53.2(B)(5))

5. Morrell (HB 44)

Act No. 37

Requires that the request for written **notice of seizure** of immovable property or a fixture on immovable property shall be accompanied by a fee of \$15 for each person to be notified by mail and \$20 for each person to be notified by service.

Effective August 15, 2005. (Amends R.S. 13:3886(B)(1))

6. Michot (SB 153)

Act No. 125

Provides that **clerks of the several district courts**, the Orleans Parish register of conveyances, and the Orleans Parish recorder of mortgages may adopt and implement a published plan which provides for the acceptance of **electronic records** of any "recordable written instrument" with several exceptions, including original maps, plats, property descriptions, or photographs. Further requires that the filer certify to the recorder that the written instrument from which the electronic record is taken conforms to applicable law relating to the form and content of instruments which are submitted in writing.

Requires the recorder to immediately endorse an electronic record with the date, hour, and minute it is filed. Further provides that an instrument filed electronically on a legal holiday or outside normal business hours of the recorder shall be accepted on the next business day.

Provides that an electronic record shall be **effective with respect to a third person** from the time of its filing in the same manner as if the written instrument itself was filed, provided the **written instrument** from which the electronic record is taken, except for instruments releasing mortgages and privileges and instruments filed after 7/1/06, is **filed with the recorder within 10 days** of the electronic filing.

Effective August 15, 2005. (Adds C.C.P. Art. 258; Repeals Act 543 of 1980 R.S.)

7. Bruneau (HB 258)

Act No. 174

Vests the Criminal District Court for the Parish of Orleans with exclusive **jurisdiction over civil commitment proceedings** when the court determines a mentally defective defendant, who is under the jurisdiction of the court on pending criminal charges but is incapable of standing trial, is a danger to himself or others, and is unlikely in the foreseeable future to be capable of standing trial.

Provides for the transfer of these cases upon the signing of the order to transfer by either a judge of the civil or criminal district court and requires the criminal district court to hear and dispose of the case with the same legal effect as if the case had been originally instituted in the criminal district court.

Also vests the criminal sheriff for the parish of Orleans with the power and authority to **serve all notices**, subpoenas papers, writs, and orders and to make proper return to the criminal district court for all cases transferred pursuant to these provisions.

Effective August 15, 2005. (Adds R.S. 13:1336(C) and 1338)

8. Hutter (HB 750)

Act No. 489

Provides that after the lapse of 15 days from the date the answer to the suit is filed in a **justice of the peace court**, any party may make written demand to have the case **set for trial** and requires the judge to give notice of trial within 45 days of the answer being filed, and the court shall issue notice of trial to be held within 45 days of that date.

Provides that, notwithstanding the provisions of existing law, if the parties fail to take any step in the prosecution or defense of the action in a justice of the peace court for a period of **one year**, the action shall otherwise be subject to the procedures for **abandonment** as provided by Article 561, provided that the court has jurisdiction over the subject matter.

Effective August 15, 2005. (Adds C.C.P. Art. 4921.1)

9. John Smith (HB 506)

Act No. 64

Authorizes **clerks and deputy clerks** to notarize **vehicle titles** and acknowledge signatures on **authentic acts** even when done outside of the course and scope of employment.

Effective upon signature of governor (June 16, 2005). (Amends R.S. 35:392.1(B))

10. Gallot (HB 115)

Act No. 193

Prohibits the use of privately owned copying, reproducing, scanning, or other imaging equipment for the copying of public records within the offices of the clerk of court, unless otherwise ordered by a court of competent jurisdiction.

Requires removal of such equipment within 30 days after August 15, 2005.

Effective August 15, 2005. (Amends C.C.P. Art. 251(A) and R.S. 44:32(C)(1)(c))

E. EVIDENCE

1. Ansardi (HB 281)

Act No. 52

Provides that in **any civil action**, whenever a certified copy of DPS&C, state police crime lab scientific analysis report of the blood alcohol concentration (**BAC**) **test results** of any person is offered in evidence in any court of competent jurisdiction, it shall be received in evidence by such court as **prima facie proof** of its contents, provided that the party against whom the scientific analysis report is sought to be used may summon and examine those making the report of the blood alcohol concentration as witnesses under cross-examination.

Effective August 15, 2005. (Amends R.S. 13:3714)

2. Walker (HB 485)

Act No. 63

Provides that information of any kind obtained from medical professional liability insurers, the office of risk management, or the Patient's Compensation fund which is compiled to identify an underlying cause of an unanticipated, adverse patient outcome or a professional liability loss shall be deemed **confidential** and **shall not be subject to discovery or admitted into evidence** in any civil action, or subject to the provisions of the Public Records Act. Also provides that the confidentiality and exemption from discovery for such information extends to testimony from any person involved in generating such confidential information.

Provides for the confidentiality and **inadmissibility** of evidence of any communication by a health care provider **expressing or conveying apology**, regret, condolence, or such other emotion made to a patient, a relative of the patient, or an agent or representative of the patient, and that such communication shall not constitute an admission or a statement against interest under C.E. Art. 801(D)(2)(personal, adoptive, and authorized admissions) or 804(B)(3)(statements against interest).

Effective August 15, 2005. (Amends R.S. 44:4.1(B)(5); Adds R.S. 13:3715.4 and 3715.5)

F. CONTRACTS / CONSUMER PROTECTION

1. N. Gautreaux (SB 151)

Act No. 296

Provides relative to **service members civil relief** and consumer rights; defines "active duty" as active duty pursuant to an executive order of the president, an act of Congress, or by the governor.

Provides, relative to a person, or spouse of a person, who is on active duty, for limits on creditor interest rates and for the termination of motor vehicle lease agreements, cellular phone contracts, tenant and resident agreements, life insurance agreements natural gas and electric power consumer agreements, and water supply and sewage systems agreements.

Effective upon signature of the governor (June 29, 2005). (Adds R.S. 29:311-319)

2. Gary Smith (HB 6)

Act No. 185

A person who is called to duty in the **uniformed services** and is assigned to temporary duty or deployment in a location that makes his cellular phone inoperable, may terminate the contract or suspend the service plan without imposition of any termination or cancellation fee, upon giving written notice and with the consent of the plan carrier. Provides for both prospective and retroactive application.

Effective August 15, 2005. (Adds R.S. 29:418.1)

3. Barham (SB 118)

Act No. 144

Provides procedures for employees who are in the **uniformed services** being called to active duty to notify their employer of their intention to **return to employment**. Allows an employee to accrue sick leave, annual leave, vacation leave, military leave, holiday pay, and any paid leave, offered by the employer, pursuant to the employer's stated leave of absence policy which would have accrued if continuously employed.

Effective August 15, 2005. (Amends R.S. 29:406(A) and (C); 410(A)(intro para) and (A)(3), (E)(1)(intro para), (E)(1)(c) and (d), (E)(2)(a), (E)(3), (F)(1)(intro para) and (I); Adds R.S. 29:410(E)(4))

4. M. Guillory (HB 738)

Act No. 101

Provides an exception under existing Louisiana Consumer Credit Law by authorizing licensed lenders at any location where consumer loans are made to sell and finance **home protection plans**, which are defined as a contract between the homeowner and a company wherein the company is obligated to pay or reimburse the cost to repair or replace the covered built-in appliances or major mechanical systems of the home in the event of a breakdown. Also authorizes the cost of a home protection plan to be paid from loan proceeds if it is not a factor in the approval of the loan and the consumer has given written indication of his desire to purchase the plan after receiving disclosure of the cost.

Effective August 15, 2005. (Amends R.S. 9:3515(A)(1); Adds R.S. 9:3516(38))

5. Waddell (HB 403)

Act No. 229

Provides that a **noncompete agreement** between a real estate broker and a licensee shall be unenforceable and an absolute nullity unless the licensee shall have the right to rescind the non-compete agreement until midnight of the third business day following its execution or its delivery to the licensee, whichever is later. Provides that the agreement shall be prominently displayed in bold-faced block lettering of not less than ten point type.

Effective as to agreements entered into after January 1, 2006. (Adds R.S. 37:1448.1)

6. Dardenne (SB 158)

Act No. 147

Requires that every contract executed by or on behalf of a minor rendering artistic or creative services for compensation in Louisiana require that 15% of the gross earnings of the minor be placed in a trust fund created for the benefit of the minor in a financial institution authorized to transact business in this state. Further prohibits withdrawal of monies from the trust fund prior to the date the minor attains the age of eighteen unless the minor is determined to be in necessitous circumstances by a court of competent jurisdiction.

Effective August 15, 2005. (Adds R.S. 17:226.1 and R.S. 51:2131-2135)

7. Lambert (HB 576)

Act No. 249

Authorizes a federally insured financial institution or its affiliate which maintains fiduciary trust or **escrow accounts for attorneys** or law firms to execute an **overdraft notification agreement**, for a reasonable price, with the attorney on the account authorizing written or electronic notification to the office of disciplinary counsel for the Louisiana Attorney Disciplinary Board of any overdraft on the account.

Provides that notification to the office of disciplinary counsel may only be given after the financial institution has given notice to the offending attorney and five business days have passed and no institution shall be civilly or criminally liable for any disclosure or non-disclosure of financial records made in compliance with these provisions.

Effective six months after the adoption of a final rule by the Louisiana Supreme Court requiring attorneys to utilize this overdraft notification service.

Effective six months following adoption of La. Supreme Court Rule relative to overdraft protection. (Adds R.S. 6:332 and 333(F)(16))

8. Michot (SB 255)

Act No. 500

Reorganizes, consolidates, and clarifies the law pertaining to the distribution and **sale of motor vehicles** in Louisiana in order to protect the public interest and public welfare.

Defines the term "licensee" to mean any person who is required to be licensed by the commission and defines "subsidiary" to mean any person engaged in selling or leasing motor vehicles in which a majority of the ownership interest of the entity is owned by the holder of a license issued by the commission.

Clarifies the law by providing a list of persons who must be licensed by the commission in order to engage in business in this state, including manufacturers, dealers, factory branches, distributors, warranty and repair centers, brokers, lessors, salesmen and agents.

Codifies the existing commission rule and regulation that licenses are not transferable and adds that the failure of the applicant to provide the required bond or insurance requirement is a reason the commission may deny an application, or revoke or suspend a license.

Specifies that these provisions are interpretive, procedural, and remedial.

Effective July 12, 2005. (Amends R.S. 32:1251 - 1261; Adds R.S. 32:1262 - 1269)

9. Duplessis (SB 205)

Act No. 499

Creates the "**Database Security Breach Notification Law**" which requires any person that conducts business in the state or any agency that owns or licenses computerized data that includes personal information, following discovery of a breach in the security system containing such data, to notify any resident of the state whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Authorizes civil actions in order to recover **actual damages** resulting from a failure to disclose in a timely manner that there has been a breach of the security system resulting in the disclosure of personal information.

Effective January 1, 2006. (Adds R.S. 51:3071-3077)

10. Townsend (HB 763)

Act No. 263

Removes the sale of **motor fuel** from the provisions of Louisiana's **Unfair Sales Law** (R.S. 51:421, et seq) which required a mandatory **6% markup** on the retail sale of motor fuel. New law provides that it is an unfair trade practice for a retailer to sell motor fuel at a price below the cost of acquiring the fuel, plus taxes and transportation charges.

Provides that discounts offered through the use of credit, debit, or shopping card will not be considered in determining whether sale is below cost.

Effective upon signature of governor (June 29, 2005). (Adds R.S. 51:422.1)

II. SUCCESSIONS AND TRUSTS

1. Dartez (HB 541)

Act No. 24

Removes the \$6,000 cap on last **wages payable to a deceased employee's spouse or children** and the requirement that any amount due in excess of \$6,000 be paid to the estate of the deceased, provided neither spouse has instituted a divorce proceeding.

Existing law provides that the employer shall require the person requesting the funds to execute an instrument before two witnesses which shall give, in addition to other required information, the name and address of the deceased, the surviving spouse, and the children, if any. Existing law further provides that the employer shall make the payments without any court proceedings, order, or judgment authorizing the payment.

Effective upon signature of governor (June 9, 2005). (Amends R.S. 9:1515(A))

2. Hunter (HB 260)

Act No. 79

Provides that in a trial to **probate or annul a testament**, the **videotape** of the execution and reading of the testament by the testator **may be admissible** as evidence of the following: (1) the proper execution of the testament; (2) the intentions of the testator; (3) the mental state or capacity of the testator; (4) the authenticity of the testament; or (5) matters that are determined by a court to be relevant to the probate of the testament.

Requires that the testator be sworn by a person authorized to take oaths and that the oath is recorded on the videotape.

Effective August 15, 2005. (Adds C.C.P. Art. 2904)

3. Beard (HB 675)

Act No. 447

Regarding **living wills**, defines "spouse" as a person who is legally married to the patient, but excludes spouses judicially separated, a spouse who cohabited with another person in the manner of married persons, spouses convicted of a crime of violence against the patient which caused their condition, or spouses who violated a domestic abuse protective order.

Provides a form which gives the declarant the opportunity to choose to withhold **life-sustaining procedures** which either include or exclude nutrition and hydration. Provides that any ambiguity shall be interpreted to preserve human life.

Provides that living wills executed prior to August 15, 2005, are not invalid if they do not address nutrition and hydration, and it should not be presumed that the declarant desires the invasive administration of nutrition or hydration if no clear choice is made.

Effective August 15, 2005. (Amends R.S. 40:1299.58.2(14) and (15) and 1299.58.3(C)(1) and (3); Adds R.S. 40:1299.58.2(16) and 1299.58.10(E)).

III. FAMILY LAW

A. MARRIAGE, DIVORCE, AND DOMESTIC MATTERS

1. Cazayoux (HB 84)

Act No. 191

Provides that the court may cast the defendant for all costs if it issues a temporary restraining order in **domestic abuse** assistance matters.

Effective August 15, 2005. (Adds R.S. 46:2134(G))

B. CHILDREN

1. Hunter (HB 261)

Act No. 80

Provides that when **termination of parental rights** is authorized by Ch.C. Art. 1015(1) or (2) (conviction of murder or unjustified intentional killing of the child's other parent), any person may file suit to terminate the parental rights of the surviving parent if that person makes a written request to the district attorney and no petition is filed by the district attorney within 60 days.

Effective August 15, 2005. (Adds Ch.C. Art. 1004(H))

2. Ansardi (HB 91)

Act No. 192

Provides, upon recommendation of the Louisiana State Law Institute, the following major substantive revisions of laws governing **filiation** of parents and children:

- (1) **Defines "maternity"** as evidence the child was born of a particular woman, which conforms to the historical understanding of motherhood, yet also recognizes that other special statutes may modify the definition in exceptional circumstances (C.C. Art. 184).
- (2) Explicitly addresses the result when after the resolution of **overlapping presumptions** of two different husbands' paternity, one of the two husbands is successful in a disavowal action (C.C. Art. 186). The presumption applicable to the other husband of the mother is resurrected. New law assures that the husband to whom the presumption applies has notice and one year to disavow.
- (3) Creates a **contestation action** that the mother may institute to disprove her former husband's paternity and establish the paternity of her current husband. The contestation action is restricted as follows: (a) must be instituted within 180 days from second marriage and two years from birth of child (C.C. Art. 193); and (b) second husband has formally acknowledged the child (C.C. Art. 191).

- (4) **Eliminates** the current legal category of **legitimation by subsequent marriage** and provides that the same circumstances create a presumption of paternity (C.C. Art. 195).
- (5) Creates a presumption of paternity of the acknowledging parent that can only be invoked in favor of the child. However, in cases handled by DSS the presumption may be invoked in favor of the parent acknowledging the child. Also, provides that in support and visitation cases handled by DSS, the acknowledgment is deemed to be a legal finding of paternity and is sufficient to establish an obligation to support the child and to establish visitation without the necessity of obtaining a judgment of paternity (C.C. Art. 196). New law **repeals acknowledgment by signature on a baptismal certificate** (C.C. Art. 196).
- (6) Provides that a child may institute an action to establish paternity even though he is presumed to be the child of another man. For succession purposes only, the action is subject to a **peremptive period** of one year which commences to run from the day of death of the alleged father (C.C. Art. 197).
- (7) Recognizes the "**avowal**" **action** that an alleged father may institute to establish his paternity at any time with the following restrictions: (a) if the child is presumed to be the child of another man, this action shall be instituted within one year of the date of birth of the child, or (b) if the mother in bad faith deceived the father regarding paternity, the action shall be instituted within one year from the day the father knew or should have known or within 10 years from the birth of the child (C.C. Art. 198). New law provides that in all cases, the action shall be brought within one year from the death of the child.
- (8) Provides that new law shall be applicable to all existing and pending claims on its effective date and all claims arising or filed on or after its effective date.

Effective upon signature of governor (June 29, 2005). (Amends C.C. Arts. 184-198) (Consolidates Chs. 1, 2, and 3 (C.C. Arts. 178-211) of Title VII of Book 1 of the Civil Code into Chs. 1 and 2, comprising C.C. Arts. 184-198)

3. Ansardi (HB 32)

Act No. 160

Allows all juvenile court judges to authorize **hearing officers** to accept agreements reached in court-ordered mediation.

Effective August 15, 2005. (Amends Ch.C. Art. 423(A)(2))

4. Nevers (SB 92)

Act No. 110

Adds prevention services to those activities that **prevent child abuse**, including voluntary family strengthening and support services, to the functions of the office of community services within the Department of Social Services.

Effective June 21, 2005. (Amends R.S. 36:477(C)(1))

5. Amedee (SB 161)

Act No. 148

Defines "**removal of a child**" as placing the child in the custody of the state or with someone other than the parent or current caretaker, during or after an investigation of abuse or neglect. Requires a court order for removal.

Terminates voluntary relative placement of a child. Requires that the determination of removal be made **immediately** following a presentation of a verified complaint and requires the court to issue a safety plan. The caretaker must provide evidence of a suitable environment and agree to and sign the safety plan.

Provides **penalties** for violations of the safety plan of imprisonment for not more than six months or a \$500 fine, or both. If the violation results in an injury to the child that requires medical attention, or the death of a child, the penalty will be two years imprisonment with or without hard labor.

Effective August 15, 2005. (Amends Ch.C. Arts. 615(B)(1) and (2), 619(B) and (C), 620(C), 622(A)(intro para), (1), (2) and (4), 624(A), 627(B), and R.S. 14:92.2(B), Adds Ch.C. Arts. 603(18) and (19), 624(G) and (H), R.S. 14:92.2(A)(3))

6. Mount (SB 243)

Act No. 338

Redefines "**neglect**" to include any affect on the health or condition of a newborn as a result of prenatal exposure to illegal drugs for purposes of identifying a child in need of care and the mandatory and permitted reporting of abuse requirements. Provides that a report is to be made, within 30 days of birth, by a health care provider involved in the delivery or care of the newborn.

Effective August 15, 2005. (Amends Ch.C. Art. 603(14))

7. Barrow (HB 644)

Act No. 378

Repeals the requirement that all files and records of a child abuse investigation which is determined to be unjustified or false shall be destroyed after the three-year mandatory record retention period has elapsed. Federal law requires that all unfounded or knowingly false reports shall be retained for federal financial auditing review for 3 years.

Effective June 30, 2005. (Repeals Ch.C. Art. 616(E))

8. Salter (HB 784)

Act No. 74

Authorizes public officials and officers and public agencies to publicly **disclose** the name, address, or **identity of a crime victim** (1) who is under 17 years of age at the time of the commission of the offense when the crime results in the death of the victim and (2) who is under 18 years of age at the time of the commission of the offense or who are victims of sex offenses, when the crime results in the death of the victim.

Effective August 15, 2005. (Amends Ch.C. Art. 811.1(G)(1) and R.S. 46:1844(W)(1)(a))

IV. PROPERTY

1. Mount (SB 247)

Act No. 136

Provides that if immovable property is acquired by anyone who is acting in the name of a partnership or a limited liability company which has not been duly constituted and which are subsequently created or organized as provided for by law, then **the existence of such entities will be retroactive** to the date of acquisition of the immovable property. Provides that such retroactive effect will be without prejudice to rights validly acquired by third persons in the interim.

Effective upon signature of the governor (June 22, 2005). (Adds C.C. Art. 2807.5 and R.S. 12:1310.5)

2. Badon (HB 318)

Act No. 216

Retains provisions (C.C.P. Art. 2293(B)) requiring service of notice of seizure on the judgment debtor or his attorney. Act No. 877 of 2004 R.S. added an additional method of service. Act No. 216 revises that additional method now (C.C.P. Art. 2293(C)(2)) and provides that if the sheriff is **unable to serve the written notice** of seizure upon the occupant of the seized property, the sheriff shall **post the notice** on the main entrance of the premises.

Provides that the failure to serve the additional notices on the occupants **shall not invalidate the sheriff's sale**; however, such failure shall prevent the ejectment or eviction of any occupants and tenants of the seized premises other than the judgment debtor. Also provides that the failure to serve the additional notices shall not affect the rights of the foreclosing creditor or of the purchaser at the sheriff's sale under C.C.P. Arts. 4701 - 4749.

Provides that if the premises foreclosed upon has more than 10 units, the creditor may elect to post a sign stating that the property has been seized and will be sold. Provides that an affidavit of the creditor shall be filed of record in the foreclosure proceeding indicating that such sign was posted.

Provides that the requirement of the additional notices for foreclosure proceedings is **applicable only to immovable property which is occupied or intended for occupancy as a residence** and shall not apply to commercial foreclosure proceedings on property subject to time share operations, hotels, motels, inns, guest houses, rooming houses, bed and breakfasts, camp sites, campgrounds, and other lodging establishments.

Effective August 15, 2005. (Amends C.C.P. Art. 2293(B))

3. Hutter (HB 138)

Act No. 415

Relative to an action to **partition community property**, existing law provides, as a penalty, that if a party fails to file a sworn detailed descriptive list timely, the other party may file a rule to show cause why its sworn detailed descriptive list should not be deemed to constitute a judicial determination of the assets and liabilities of the community.

Act No. 415 provides, as an optional penalty, for the award of **attorney fees and court costs** to a party, if the other party fails to comply with the time limitations for filing the detailed descriptive list without permission from the court or an agreement from the parties. However, if the court determines that the party's filed detailed descriptive list of community property constitutes the assets and liabilities of the community, the court shall not also award attorney fees and court costs against the other party who failed to file a detailed descriptive list.

Effective August 15, 2005. (Adds R.S. 9:2801(C))

4. Barham (SB 196)

Act No. 301

Provides that revisions to C.C. Art. 466 are intended to clarify and re-confirm the interpretation of the article, including the "**societal expectations**" analysis, that prevailed prior to the decision in *Willis-Knighten Medical Center v. Caddo Shreveport Sales*, 2005 WL 737481(La.) 2004-0473 (La. 4/1/05).

Relative to the definition of **component parts** of an immovable, Act No. 301 provides that:

- (1) Things permanently attached to an immovable are its component parts.
- (2) Things, such as plumbing, heating, cooling, electrical or other installations, are component parts of an immovable as a matter of law.
- (3) Things are considered to be permanently attached to an immovable if, according to prevailing notions in society, they are considered to be component parts of an immovable.

Provides that the provisions of Act No. 301 shall apply to existing immovables but that the Act may not be applied to divest already vested rights or to impair obligations of contracts.

(Section 3 of the Act discusses the legislative history and reasons for reconfirming the "societal expectations" test for determining component parts of immovables.)

Effective upon signature of the governor (June 29, 2005). (Amends C.C. Art. 466)

V. MORTGAGES, SECURITY DEVICES, AND PRIVILEGES

1. Baldone (HB 465)

Act No. 62

Provides that the **special mortgage** furnished by a **tutor** in favor of a minor shall include the date of birth of the minor. Provides that the failure to include the date of birth of the minor **shall not invalidate** the mortgage.

Effective August 15, 2005. (Amends C.C.P. Art. 4133)

2. Gallot (HB 214)

Act No. 169

Provides, on recommendation of the Louisiana State Law Institute, for the **consolidation of laws relating to the recordation of instruments** in the mortgage and conveyance records, with the following major changes:

- (1) Provides that the inadvertent recordation of a "Xerox" or similar facsimile will be given effect if it is proven to be a genuine copy of the original.
- (2) Establishes a presumption as to the time and order in which instruments are filed if the recorder, upon acceptance of an instrument, fails to properly endorse them at time of filing.
- (3) Requires that the notice of lis pendens state the name of the person against whom it is filed.
- (4) Specifies that a suit against the recorder arising out of the performance of his official duties is to be brought against the recorder in his "official capacity".
- (5) Provides that the recordation of an "Extract of Lease" in lieu of recording the actual contract is not applicable to mineral leases.
- (6) Requires that every request for the cancellation of a mortgage be in writing and signed by the person requesting the cancellation.
- (7) Provides that a mortgage may be cancelled upon the simple request of a licensed financial institution that certifies it is the obligee of the debt secured by the mortgage, or was the obligee when the debt was extinguished.
- (8) Clarifies and expands the mandamus remedy to cancel or correct a mortgage record to include virtually all cases where a correction of the mortgage or conveyance records is required to accurately reflect their status or to require the recorder to perform particular duties with respect to records which the law specifically requires.

Effective January 1, 2006. (Amends C.C. Arts. 517, 1554, 2021, 2035, 2442, and 3337; C.C.P. Arts. 3752 and 4362; R.S. 9:4833 and 4834; R.S. 13:901; R.S. 44:71, 72, 73, 75, and 131; Adds C.C. Arts. 3338-3368; R.S. 44:77-80, 111-119, and 171; Repeals C.C. Arts. 3308, 3309, 3310, 3314, 3320(A) and (B), 3321-3324, and 3327-3336; R.S. 9:2371(A) and (B), 2721(A), 2721.1, 2722, 2728, 2733, 2742-2744, 2746 through 2757, 5141, 5161, 5162, 5165, 5166, 5167(A)-(D), 5168-5207, 5214-5216, 5502, and 5556; R.S. 13:752-755, 913, and 3727; R.S. 35:17 and R.S. 44:76, 102 and 103, 132-136, 138, 162, 163, 202, 203, 232, 232.1, 233, and 268; Redesignates R.S. 9:2731 as R.S. 31:216 and R.S. 9:2732 as R.S. 31:217)

******* EFFECTIVE DATE DELAYED until July 1, 2006 *******
See Act No. 13 of the 2005 First Extraordinary Session

3. Baldone (HB 276)

Act No. 175

Makes it unlawful for a person, who having executed a **security agreement under UCC Chapter 9** on movable property, to sell, assign, exchange, injure, destroy, conceal, or otherwise dispose of all or any part of the encumbered property with **fraudulent or malicious intent** to defeat the mortgage or security interest, or remove the encumbered property from the location designated in the security agreement, if any, or from the parish where it was located at the time of the granting of the security interest **without written consent of the secured party**, with fraudulent or malicious intent to defeat the security interest. Provides for penalties of not more than \$500 or imprisoned for not more than six months, or both.

Effective August 15, 2005. (Adds R.S. 14:72.4)

VI. LABOR AND WORKER'S COMPENSATION

1. Hunter (HB 680)

Act No. 257

Provides that if a direct employer is found in a worker's compensation suit to have **knowingly failed to secure workers' compensation insurance** or proper certification of self-insured status, and the employer **fails to pay the worker's compensation judgment** rendered in favor of the employee for 60 days after the parties have exhausted appeals, the employee, or the legal dependent of the a deceased employee, may sue the employer for legal damages (in tort) and enforce the greater of either the judgment for legal damages or the judgment for worker's compensation benefits.

Provides that any person paying or obligated to pay compensation may seek recovery for amounts paid from a third person by filing suit in district court. Additionally authorizes workers' compensation judges to approve **lump sum settlements** if a suit has been filed against a third-party.

Grants **jurisdiction to workers' compensation judges** over group self-insurance indemnity contract disputes, cross-claims involving self-insurance group funds, concursus proceedings concerning entitlement to workers' compensation benefits, payment for medical treatment, or attorney fees arising out of injury subject to workers' compensation. Authorizes workers' compensation judges to make findings of direct and constructive contempt, with written reasons, and assess **civil fines** of up to \$500. Gives workers' compensation judges authority to issue subpoenas and subpoenas duces tecum.

Regarding the Second Injury Fund, requires approval of a settlement within 180 days and failure of the board to respond to a request for approval within the allotted time frame, will deem the request approved.

Effective August 15, 2005. (Amends R.S. 23:1101(B), 1102(A)(2), 1208(D) and (G), 1226(A) and (B)(3)(a), 1272(D), 1291(C)(3), (4) and (5), 1310.3(E), 1310.7(B) and (C), 1377(B)(1), and 1378(A)(5) and (8)(a) and (b); Adds 23:1032.1 and 1034.2(C)(4); Repeals R.S. 23:1101(D) and 1168(A)(2)(b)).

2. Duplessis (SB 57)

Act No. 322

Requires employers of 20 or more full-time or part-time employees to provide all new hire employees, whose anticipated wages are \$35,000 or less annually, with information on the federal **Earned Income Tax Credit** and the **Advance Earned Income Credit**, however the employer **shall not be liable to the employee for civil damages** for failure to provide the information.

Effective June 30, 2005. (Adds R.S. 23:1018.1 and 1018.2)

VII. CRIMINAL JUSTICE

A. NEW CRIMES

1. Baldone (HB 276)

Act No. 175

Creates the crime of disposal of property with fraudulent or malicious intent. Makes it unlawful for a person, who having executed a security agreement under UCC Chapter 9 on movable property, to sell, assign, exchange, injure, destroy, conceal, or otherwise dispose of all or any part of the encumbered property with fraudulent or malicious intent to defeat the mortgage or security interest, or remove the encumbered property from the location designated in the security agreement, if any, or from the parish where it was located at the time of the granting of the security interest without written consent of the secured party, with fraudulent or malicious intent to defeat the security interest. Provides for penalties of not more than \$500 or imprisoned for not more than six months, or both.

Effective August 15, 2005. (Adds R.S. 14:72.4)

2. Daniel (HB 9)

Act No. 11

Creates the new crime of unlawfully operating an **audiovisual recording** function of any device **in a motion picture theater** while a motion picture is being exhibited without the written consent of the motion picture theater owner.

Provides that the owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee, **shall not be liable in any civil action** arising out of actions taken by such owner, lessee, agent, or employee in the course of subsequently detaining a person believed in good faith to have violated new law, unless the plaintiff can show by clear and convincing evidence that such measures were manifestly unreasonable or the period of detention was for an unreasonable length of time.

Effective August 15, 2005. (Adds R.S. 14:223.9)

3. Greene (HB No. 422)

Act No. 59

Creates the crime of "**assault on a child welfare worker**" and defines it as an assault committed when the offender has reasonable grounds to believe the victim is a child welfare worker acting in the performance of his duties.

Provides for the definition of "child welfare worker" and provides for a fine of not more than \$500 or imprisoned not less than 15 days nor more than 90 days, or both for violation of the crime.

Effective upon signature of governor (June 16, 2005). (Amends R.S. 14:35.1; Adds R.S. 14:38.3)

4. Katz (HB 56)

Act No. 187

Creates the crime of **human trafficking**, by prohibiting a person from intentionally recruiting, harboring, transporting, providing, soliciting, or obtaining another person through fraud, force, or coercion to provide services or labor, and provides for criminal penalties up to a fine not to exceed \$25,000 and imprisonment at hard labor for not less than 5 years nor more than 25 years.

Effective August 18, 2005. (Amends R.S. 14:46.2)

5. Greene (HB 547)

Act No. 246

Creates the crime of "**computer-aided solicitation of a minor**". Defines such crime as a person 18 years of age or older knowingly communicating through the use of an electronic textual communication with a person under the age of 18 for the purpose of or with the intent to engage or participate in sexual conduct or a crime of violence or with the intent to engage or participate in sexual conduct in the presence of a person under the age of 18. Defines "electronic textual communication" and "sexual conduct".

Provides for criminal penalties, including a fine not to exceed \$10,000, imprisonment at hard labor for not less than two nor more than 10 years, or both. Provides that upon a subsequent conviction, the criminal penalty includes imprisonment for 10 to 20 years at hard labor without benefit of probation, parole, or suspension of sentence. Requires a person convicted of this offense to register and provide notification in accordance with the sex offender registration and notification requirements.

Effective August 15, 2005. (Adds R.S. 14:81.3)

6. Chaisson (SB 156)

Act No. 297

Creates the **Anti-Skimming Act**, which criminalizes the use of a scanning device and/or re-encoder to capture encoded information from a magnetic strip from a credit, debit, or other payment card and then places the encoded information on a different credit, debit, or other payment card with the intent to defraud the authorized user, the issuer of the user's card, or a merchant.

Provides a penalty for either using a scanning device to access information with intent to defraud of no more than five years imprisonment or a fine of not more than \$5,000 or both. Provides a penalty for using both a scanning and a re-encoder device to access and copy information with intent to defraud of no more than 10 years imprisonment or a fine of not more than \$10,000 or both.

Effective August 15, 2005. (Adds R.S. 14:67.4)

B. DRIVING WHILE INTOXICATED

1. Wooton (HB 692)

Act No. 381

Requires the court to require an **ignition interlock device** on any vehicle operated by a person charged with a second or subsequent offense of driving while intoxicated, underage driving under the influence, vehicular homicide, vehicular negligent injuring, and first degree vehicular negligent injuring as a condition of release on bail. Provides that failure to comply with these provisions shall result in the **revocation of bail and reincarceration** of the defendant, but that the court may waive these provisions under exceptional circumstances.

Effective August 15, 2005. (Adds C.Cr.P. Art. 336.2)

2. Chaisson (SB 157)

Act No. 497

Provides the court with **discretion** in determining whether to suspend the remainder of the term of imprisonment after a person convicted of a 3rd offense DWI serves 30 days imprisonment and after the 4th or subsequent DWI, offender serves 60 days.

Requires any person whose sentence is suspended to be placed on supervised probation, to complete either the **inpatient substance abuse treatment** program found in existing law or treatment in a "drug court" setting, and to comply with the existing laws regarding home incarceration.

Authorizes the court to require the offender to **reimburse the state** for substance abuse treatment, driver improvement programs, or home incarceration pursuant to a payment schedule to be determined by the court.

Effective August 15, 2005. (Amends R.S. 14:98(D)(1)(a), (b)(intro. para.), (c), and (d) and (E)(1)(a), (b)(intro. para.), (c), and (d), and (I))

C. OTHER CRIMINAL MATTERS

1. Jane Smith (HB 88)

Act No. 163

Enacts the "**Trey Hutchison Act**". Requires adults who commit **violent offenses against peace officers** to register with local law enforcement agencies within 10 days of establishing residence in La. or upon release from confinement. Requires the person who is required to register to provide the appropriate law enforcement agency with certain pieces of information, including name, address, birth date, social security number, aliases used by the offender, crimes for which the offender is required to register, and date and place of conviction. Requires local law enforcement agencies to record the fingerprints of each person who must register. Requires local law enforcement agencies to forward this information to the Bureau of Criminal Identification and Information within five days of receiving such information.

Provides for a **limitation of liability** except for willful and wanton acts or gross negligence.

Effective upon signature of governor (June 28, 2005). (Adds R.S. 15:641-647)

2. Baudoin (HB 5)

Act No. 30

Changes the penalty for leaving a **child unattended and unsupervised in a motor vehicle** from a fine of not more than \$25 to a fine of not more than \$500 or imprisonment for not more than six months, or both, and that a conviction of second or subsequent offense shall be imprisoned with or without hard labor for not less than one year nor more than two years and imposed a fine of not less than \$1,000 nor more than \$2,000, or both.

Effective August 15, 2005. (Amends R.S. 32:295.3(D))

3. Farrar (HB 16)

Act No. 32

Relative to the crime of **vehicular homicide**, deletes as a condition of the offense that the operator must have **fled the scene** of the accident and otherwise retains the provisions of existing law.

Effective August 15, 2005. (Amends R.S. 14:32.1(A)(4))

4. Jane Smith (HB 106)

Act No. 38

Authorizes a judge to issue a **search warrant** authorizing the search of a person for bodily samples to obtain **DNA** or other bodily samples. Provides that the warrant may be executed any place where the person is found and shall be directed to any peace officer. Provides that such warrant remains in effect for 180 days after its issuance.

Effective August 15, 2005. (Amends C.Cr.P. Arts. 161(A)(intro. para.) and 163; Adds C.Cr.P. Art.163.1)

5. T. Powell (HB 101)

Act No. 165

Authorizes a **driver's license suspension** for 180 days when a person is convicted of an offense involving unlawful **purchase or possession of alcoholic beverages**. A restricted license could be issued if a hardship would result from being unable to drive to school or work.

Effective August 15, 2005. (Amends R.S. 14:93.13(B); Adds R.S. 14:93.12(B)(3) and R.S. 32:414(S))

6. T. Powell (HB 17)

Act No. 186

Increases the time period from 10 years to 30 years for instituting prosecutions for **certain sex offenses when the victim is under the age of 17**. Provides that the 30-year period begins to run when the victim attains the age of 18. The sex offenses included are: (1) sexual battery; (2) second degree sexual battery; (3) oral sexual battery; (4) felony carnal knowledge of a juvenile; (5) indecent behavior with juveniles; (6) molestation of a juvenile; (7) crime against nature; (8) aggravated crime against nature; (9) incest; and (10) aggravated incest.

Effective August 18, 2005. (Amends C.Cr.P. Article 571.1)

7. Trahan (HB 581)

Act No. 250

Provides for **privileged communications** with respect to complaints provided to a **hotline** or call center and sent to the Dept. of Justice (DOJ) or the Dept. of Health and Hospitals (DHH), for the purposes of **reporting alleged abuse, fraud, or wrongdoing** involving any person or legal entity or any governmental agency, public employee, or appointed or elected official. Provides that the reported information and the identity of the persons reporting the information shall not be required to be disclosed by way of testimony or public records request and shall be privileged communications and exempt from the laws relative to public records.

Provides that the privilege of such information **shall cease only**:

- (1) When the person is compelled to testify on behalf of the state on the matter; or
- (2) Upon motion of any person arrested for or charged with a criminal offense who petitions the court for an in camera inspection of the records of a privileged communication in certain circumstances and the court determines that the person is entitled to the information because it contains exculpatory evidence.

Effective August 15, 2005. (Amends R.S. 44:4.1(B)(7); Adds R.S. 15:477.2)

8. Jones (SB 318)

Act No. 503

Extends the prohibition of a **sexual offender** from going in, on or within **1,000 feet of school** property and certain other facilities to any sexual offender whose offense involved a minor child and who was placed on probation or was paroled prior to 8/15/04 and is on probation or parole as of 8/15/05.

Effective August 15, 2005. (Amends R.S. 14:403.3(D); adds R.S. 15:538(D)(6) and R.S. 40:2525)

9. Jones (SB 318)

Act No. 503

Requires sheriff or municipal chief of police, upon notification of the **presence of a child predator**, or sexually violent predator, to notify within 48 hours each licensed day care center, elementary school, middle school, and high school within a one mile radius of the temporary or permanent residence of the predator; subject to available funding.

Makes it a crime to intentionally communicate **false information** concerning a missing child that causes the activation of the Amber Alert System. Persons in violation may be ordered to reimburse all costs incurred by any person or agency as a result of responding to the false communication

Effective August 15, 2005. (Amends R.S. 14:403.3(D); Adds R.S. 14:403(E) and 549(H) and R.S. 40:2525)

10. Jefferson (HB 228)

Act No. 358

Prohibits **bail in extradition cases** once a warrant is issued and provides for a contradictory hearing to determine ineligibility of bail in certain circumstances involving charges of a crime of violence or a crime involving a controlled dangerous substance.

Effective August 15, 2005. (Amends C.Cr.P. Arts. 270(A) and 271(A) and (B))

11. Geymann (HB 451)

Act No. 237

Provides for **minimum amount of bail** for arrests for certain sex offenses and requires a contradictory bail hearing within 5 days of notice of a prior conviction, exclusive of weekends and legal holidays, before setting bail for a person in custody who is charged with a sex offense and who has been **previously convicted of a sex offense**, and prohibits unsecured personal surety to post bail.

Authorizes the court to perform an ex parte examination of the evidence against the accused under certain circumstances. Requires that the court take into consideration the previous criminal record of the defendant; any potential threat or danger the defendant poses to the victim, the family of the victim, or to any member of the public, especially children; and to consider any statistical evidence prepared by the U.S. Department of Justice relative to the likelihood of the crime being repeated.

Effective August 15, 2005. (Adds C.Cr.P. Art. 330.2)

VIII. INSURANCE

1. McVea (HB 779)

Act No. 265

Provides that the **compulsory motor vehicle liability insurance** laws apply to the operation of vehicles **in privately owned parking lots** used for commercial or retail activities. Exempts agricultural vehicles that are not operated on public roads or highways and vehicles that are legally parked.

Effective August 15, 2005. (Adds R.S. 32:867)

2. LaFleur (HB 188)

Act No. 418

Prohibits automobile liability insurance policies from **limiting damages** that can be recovered for bodily injury by the named insured, spouse, or other **family member** to an amount less than the highest policy limit or potential recovery. Limits recovery to actual damages sustained.

Effective August 15, 2005. (Amends R.S. 22:622.2)

3. Tucker (HB 69)

Act No. 408

Requires insurance companies to provide a **discount of the premiums** only on the liability insurance for automobiles owned by active **military personnel** based in Louisiana.

Effective July 11, 2005. (Amends R.S. 22:1425(A), (B), and (C)(3) and (5); Repeals §2 of Act 770 of 2004 R.S.)

4. Walsworth (HB 689)

Act No. 450

Requires a person **convicted of fraud** involving automobile insurance to pay **restitution** to the **victim company** for insurance payments obtained through the fraud and for the cost associated with the investigation and defense of the fraudulent claim, including attorney fees and court costs. Provides that restitution **does not extinguish any civil right of action** of the victim company, but requires any civil judgment to be reduced by the amount of restitution already received.

Effective August 15, 2005. (Amends R.S. 22:1244(A)(3); Adds R.S. 22:1244(C)).

IX. JUDICIAL AFFAIRS

Several bills of note affecting the judiciary, the district attorneys, and the clerks of court were passed during the 2005 Regular Session of the Legislature.

A. GENERAL PROVISIONS

1. Heitmeier (SB 320)

Act No. 311

Adds four additional **assistant district attorneys** in the parish of Orleans.

Effective August 15, 2005. (Amends R.S. 16:51(A)(6), (9), (12), (35), and (38))

B. COURTS OF LIMITED JURISDICTION

1. Several courts increased the monetary amount in dispute for civil jurisdiction as follows:

City Court of Bogalusa	\$25,000	(HB 8 / Act 31)
City Court of Eunice	\$25,000	(HB 7 / Act 349)
City Court of Springhill	\$35,000	(HB 75 / Act 109)
City Courts of Slidell	\$35,000	(HB 135 / Act 353)
Justice of the Peace Courts	\$3,500	(HB172 / Act 43)

2. Marionneaux (SB 115)

Act No. 112

Provides that the City Court of **Port Allen** shall remit not less than the sum of \$17.50 and not more than the sum of \$35 upon recommendation of the district board and by a majority vote of the judges of the courts of original jurisdiction within the district to the district **indigent defender board** in each case in which a defendant is convicted after a trial, a plea of guilty or nolo contendere, or after forfeiting bond.

Effective August 15, 2005. (Amends R.S. 15:146(B)(1)(a))

X. MISCELLANEOUS

1. T. Powell (HB 334)

Act No. 55

Provides that **ex officio notaries** for municipal police departments are exempt from the requirement of giving bond.

Effective August 15, 2005. (Amends R.S. 35:407; Repeals R.S. 35:399)

2. John Smith (HB 506)

Act No. 64

Authorizes **clerks and deputy clerks** to notarize **vehicle titles** and acknowledge signatures on **authentic acts** even when done outside of the course and scope of employment.

Effective upon signature of governor (June 16, 2005). (Amends R.S. 35:392.1(B))

3. Gallot (HB 115)

Act No. 193

Prohibits the use of privately owned copying, reproducing, scanning, or other imaging equipment for the copying of public records within the offices of the clerk of court, unless otherwise ordered by a court of competent jurisdiction.

Requires removal of such equipment within 30 days after August 15, 2005.

Effective August 15, 2005. (Amends C.C.P. Art. 251(A) and R.S. 44:32(C)(1)(c))

4. Lentini (SB 353)

Act No. 347

Requires the secretary of DOTD to study all public **railroad grade crossings** and to establish priorities for improvement, relocation or **closure of crossings**.

Authorizes the department to evaluate the need to close any public railroad grade crossing that is on a non-state maintained highway within the territorial jurisdiction of any local governing authority in compliance with the Federal Railroad Crossing Safety Program. In the event that the evaluation suggests a closure, written notice must be given to the local governing authority, to be followed by an opportunity to respond.

Effective August 15, 2005. (Amends R.S. 48:390(A) and (B); adds R.S. 48:390(F) and 390.1; repeals R.S. 48:390(C), (D) and (E))

5. Cravins (HB 385)

Act No. 447

Increases the **penalties for certain railroad grade crossing violations** for a first offense from a fine of not more than \$175 to a fine of not more than \$250 and creates the Railroad Crossing Safety Fund.

Effective August 15, 2005. (Amends R.S. 32:171(F)(1) and (2) and 175(C); Adds R.S. 32:175(D) and R.S. 48:393)

6. Crowe (HB 242)

Act No. 421

Provides that a victim of an alleged rape or incest who is seeking an **abortion** with the use of state funds may request and receive spiritual counseling and shall be offered informed consent information, but without the 24-hour delay period.

Effective August 15, 2005. (Amends R.S. 40:1299.35.7(D))

XI. CONSTITUTIONAL AMENDMENTS

Of the **(54) proposed constitutional amendments** filed for consideration during the 2005 Regular Session, the following **(5) constitutional amendments will be submitted to the voters** at the election to be held on **November 7, 2006**.

1. Bajoie (SB 200)

Act No. 509

Exempts consigned art from ad valorem property tax; that is, all artworks such as sculptures, glass works, paintings, drawings, signed and numbered posters, photographs, mixed media, collages, or any other item which would be considered as the material result of a creative endeavor.

(Effective January 1, 2007.) (Adds Const. Art. VII, Section 21(C)(19))

2. Adley (SB 32)

Act No. 510

Exempts from ad valorem taxes medical equipment leased, for a term exceeding five years, by a nonprofit corporation or association which owns or operates a small, rural hospital provided the medical equipment is used solely for health care purposes at the hospital. Exemption lasts for the term of the lease. Requires the hospital to satisfy all of the following criteria to be eligible for this exemption: (1) have less than 50 Medicare-licensed acute care beds and (2) be located in a municipality having a population of less than 10,000 which has been classified by the U.S. Health Service as an area with a shortage of health manpower.

(Effective January 1, 2007.) (Amends Const. Art. VII, Section 21(B)(1)(a))

3. Nevers (SB 89)

Act No. 511

Assessments on residential property shall not be increased beyond a special assessment level determined as the total assessment of the property for the year prior to qualification of the special assessment. Retains the special assessment level for persons age 65 or older who have an adjusted gross income not exceeding \$50,000. Adds the following persons to those qualified to receive the special assessment level:

- (1) Persons with a service-connected disability rating of 50% or more by the U.S. Department of Veterans Affairs.
- (2) Members of the U.S. armed forces or the Louisiana National Guard who owned and last occupied such residence who are killed or missing in action or a prisoner of war for a period exceeding 90 days.
- (3) Persons permanently totally disabled as determined by a final non-appealable court judgement or as certified by a state or federal administrative agency charged with responsibility for making disability determinations.

Applies to the surviving spouse who is over age 45 or who has minor children and who remains the owner of the property.

Requires persons below age 65 who qualify for the special assessment level to qualify each year until age 65.

(Amends Const. Art. VII, Section 18(G)(1)(a)(i) and (iii) and (2)(a); adds Const. Art. VII, Section 18(G)(1)(a)(iv))

4. Arnold (HB 187)

Act No. 512

Exempts motor vehicles from municipal ad valorem taxes and removes language that authorizes a municipal governing authority to impose ad valorem taxes on motor vehicles.

(Amends Const. Art. VII, Section 21(E))

5. Dupre (SB 187)

Act No. 513

******* REPEALED *******

See Act No. 69 of the 2005 First Extraordinary Session

Creates the Wetlands Conservation and Restoration Fund and dedicates the first \$600 million received by the state in each fiscal year from oil and gas activity on the Outer Continental Shelf. Provides that these monies shall only be used for the "purposes of coastal wetlands conservation, coastal restoration, and infrastructure directly impacted by coastal wetland losses."

(Adds Const. Art. VII, Section 10.2(E))

2005 FIRST EXTRAORDINARY SESSION

I. SELECTED LEGISLATION

1. Toomy (HB 3)

Act No. 13

Changes the effective date of Act 169 of the 2005 R.S. from Jan. 1, 2006 to July 1, 2006.

Act 169 of the 2005 R.S. provided for the recordation of documents in the mortgage and conveyance records and the consolidation of the laws affecting the recordation of documents.

Effective upon signature of governor (November 29, 2005). (Amends §10 of Act 169 of the 2005 R.S.)

2. Cazayoux (HB 15)

Act No. 43

Relative to a petition for expropriation by a declaration of taking of property (**quick take**) by DOTD for **design-build projects**, requires a **single certificate** signed by the chief engineer or his chief assistant declaring that the right-of-way has been fixed in a sufficient manner and that a determination of the amount and location of the property required for the purposes set forth in the petition has been made and that the property is neither excessive nor inadequate for such purposes. Act 43 does not amend the existing procedures as to venue and appeals of expropriation suits.

Under traditional DOTD projects, R.S. 48:442 requires multiple certificates signed by the chief engineer and other engineers as to various design aspects of the highway project to be attached to the petition to expropriate.

Effective upon signature of governor (December 6, 2005). (Adds R.S. 48:442.1)

3. Martiny (HB 28)

Act No. 46

Provides that a **prisoner** who was evacuated to another prison during or immediately after Hurricane Katrina or Rita and who was not released timely shall **not have a cause of action** for damages against the law enforcement agency for the **failure to timely release** the prisoner due to the effects of Hurricane Katrina or Rita or for the **lack of access to prison records** to ascertain when the prisoner is to be released. However, the law enforcement agency **shall be liable** if it **fails to make an attempt** to ascertain when the prisoner is to be released and fails to release the prisoner within a **reasonable length of time** following Hurricane Katrina or Rita.

Provides for retroactive application to August 29, 2005.

Effective upon signature of governor (December 6, 2005). (Amends R.S. 29:735(A))

Retains existing laws authorizing the lessor to enter leased premises to make necessary repairs, requiring the lessor to preserve the lessee's property when making necessary repairs and authorizing the lessee to remove the lessee's property when the lessee has abandoned the premises.

R.S. 9:2554(C)) requires the lessor to preserve the lessee's salvageable property and authorizes the **disposal of the unsalvageable property**, provided that the lessor makes a reasonable effort to notify the lessee at least 10 days before disposing of the property. Adds procedures for storing and disposing of salvageable property and for the payment of costs of removal of the lessee's property.

(R.S. 9:2554(D)) requires the lessor to **document the condition** of moveable property before removal by either a camera or video camera with accompanying notes or voice recordings or by causing an inventory of the property.

(R.S. 9:2554(E)(1) and (2)) provides for **presumption** of the lessee's **intent to abandon** the leased premises, and provides that the lessee may **rebut the presumption** of abandonment by a showing of certain information.

(R.S. 9:2554(F)) provides that unless otherwise agreed by the parties, in the event of the **total destruction** of the immovable property, the **lease is terminated**, and the lessor is bound to reimburse the rent paid by the lessee since the time of the total destruction of the property, **except that** the lessor may deduct the amounts expended for the removal and preservation of the property on the leased premises, unless otherwise covered by insurance.

(R.S. 9:2554(G)) provides that the **lessor shall not be liable to the lessee for any damage or loss for removing property** of the lessee that has been abandoned or if the lessor disposes of the lessee's unsalvageable property, provided that the lessor has made every reasonable effort to notify the lessee, has been available for contact by the lessee or present at the leased premises and has complied with the provisions of Act 56.

Act 56 does not apply to any lessee who **continues to occupy the premises** or who has attempted to regain occupancy or remove his property within 30 days from the date the affected area has been officially declared available for inspection, and does not apply to the lease or furnishing of sleeping rooms, cottages, or cabins by hotels or motels.

Act 56 applies to leased premises directly affected by Katrina and Rita and terminates on June 30, 2006.

Effective upon signature of the governor (December 6, 2005). (Adds R.S. 9:2554)

5. Greene (HB 104)

Act No. 59

Relative to the child support guidelines, provides that the **court may deviate** from the guidelines if the application of the guidelines would be **unjust or inequitable to a party** who was denied access to the courts as a direct result of Hurricane Katrina or Rita.

Provides that a party shall **not be deemed voluntarily unemployed** or underemployed if he has been temporarily unable to find work or has been temporarily forced to take a lower paying job due to Hurricane Katrina or Rita.

Provides that the court may make a child support modification **retroactive** to the date an emergency was declared for Hurricane Katrina or Rita, **if judicial demand is filed** before April 15, 2006 **and if the Bradley Amendment is amended to permit retroactive modification of support.** (42 USC 666(a)(9)(c))

Excludes disaster assistance benefits from the definition of gross income.

Applicable to all pending and future cases.

Effective upon signature of governor (December 6, 2005). (Amends R.S. 9:315(C)(3)(a) and 315.1(B); Adds R.S. 9:315(C)(3)(d)(v), 315.11(C), and 315.21(F))

6. Greene (HB 92)

Act No. 31

Provides that Executive Orders KBB 2005-32, 48, and 67 shall not affect the calculation of **the 180 day waiting period** for a 102 or 103(1) divorce or the waiting periods for a divorce in a covenant marriage, and that any judgment of divorce rendered during the time periods of the Executive Orders shall be valid if no appeal or request for new trial has been filed by January 3, 2006.

Provides that if the 2 year abandonment period in CCP Art. 3954 would have accrued during the suspension of legal deadlines provided in the Executive Orders, the parties have until December 29, 2005 to file a rule to show cause.

Effective upon signature of governor (November 29, 2005). (Adds R.S. 9:304)

7. Ansardi (HB 90)

Act No. 6

Ratifies the action of the governor in issuing Executive Orders KBB 2005-32, 48, and 67, subject to the provisions of Act 6.

Creates a limited suspension of all prescription and preemptive periods from Aug. 26, 2005, until Jan. 3, 2006, if the prescriptive or preemptive period would have otherwise lapsed during the period from Aug. 26, 2005, through Jan. 3, 2006.

Creates a limited suspension and/or extension of all legal deadlines from Nov. 25, 2005, through Jan. 3, 2006, if the deadline would have lapsed during this time period, and authorized a **party to seek an extension of a legal deadline** which lapsed during the time period from Oct. 25, 2005, through Nov. 25, 2005.

Provides that a party who is domiciled within the parishes of Cameron, Orleans, Plaquemines, St. Bernard, Jefferson or Vermilion, or whose cause arose within such parishes or whose attorney is domiciled within or has a law office within such parishes **may seek a limited extension or suspension of prescription or peremption or other legal deadlines by contradictory motion or declaratory judgment**, when the right, claim, or action would have expired during the time period of January 4, 2006 through May 31, 2006. This procedure does not preclude a party from using the basis of the motion as a defense to an exception of prescription.

These procedures **do not apply to landlord-tenant disputes, evictions proceedings, and lease disputes regarding immovable property** if the proceeding was carried out in accordance with Executive Order KBB 2005-67.

Effective upon signature of governor (November 23, 2005). (Adds R.S. 9:2551-2565)

8. Toomy (HB 4)

Act No. 14

Authorizes each clerk of court, and the recorder of mortgages, register of conveyances, and office of notarial archives for the parish of Orleans, to establish an **ancillary office** (with all of their necessary powers, duties, and functions) **in any parish in the state** during the period in which the governor has declared a state of emergency or disaster, if the office is unable to function at its existing location and no other location is readily available within the parish or territorial jurisdiction.

Applies retroactively to August 29, 2005.

Effective upon signature of governor (November 29, 2005). (Adds R.S. 13:5)

9. Murray (SB 8)

Act No. 1

Acknowledges the importance of **restoration and rebuilding of electric and gas utilities** following a natural disaster, and that restoration and rebuilding of electric and gas utilities is a **valid public purpose** in the best interest of the citizens and businesses of this state.

Effective upon signature of the governor (November 18, 2005). (Adds R.S. 45:859)

10. Schedler (SB 16)

Act No. 37

Requires that **settlement monies** on claims arising under **homeowner insurance policies** be paid jointly to the claimant/mortgagee and mortgagor and that the settlement proceeds be placed in an **interest-bearing escrow account**, and that the interest on the proceeds of the funds deposited shall accrue to the benefit of the claimant.

Requires that when the damaged property is replaced or otherwise repaired to the satisfaction of the person holding the mortgage on the property and the claimant, any remaining balance in the escrow account be paid to the claimant.

Defines "settlement proceeds" as funds paid on an insurance claim for damage to residential immovable property as a result of Hurricane Katrina or Hurricane Rita, and where the funds are in the amount of \$25,000 or more, and are held in an interest-bearing account for 60 days or more.

Effective upon signature of the governor (December 6, 2005). (Adds R.S. 10:9-211)

11. Murray (SB 48)

Act No. 38

Prohibits issuance or delivery in this state of any **fire insurance policy** with respect to residential or commercial property unless the insurer advises the insured in writing, prominently displayed on a form promulgated by the commissioner of insurance, as to coverages that are included in the policy for which premiums are paid, particularly as to the **coverage for flooding or mold** and whether there is an **increased deductible required for hurricane damage**.

Provides that no payment of a claim on a homeowner's policy is to be considered a final settlement if the insurer fails to provide the insured with a statement accurately reflecting the amount paid under each category of coverage under the policy.

Effective on December 6, 2005. (Adds R.S. 22:696 and 1471.1)

12. Adley (SB 55)

Act No. 39

Requires that every **residential property insurer** who delivers, or issues for delivery, in any part of this state, to advise the insured in writing what coverages are included in the policy, and requires the disclosure to include whether or not the insured has coverage for **flooding** and **mold**; whether or not an **increased deductible** is required for hurricane damage; and the availability of flood insurance through the National Flood Insurance Program, and that excess flood insurance may be available by separate policy.

Effective upon signature of the governor (December 6, 2005). (Adds R.S. 22:667.1)

13. Salter (HB 27)

Act No. 24

Provides for a special statewide election to be held on the fifth Saturday in April of 2006 (April 29, 2006) for the purpose of submitting to the electors of the state any proposed constitutional amendments proposed by the legislature in accordance with law for submission on such date.

Effective upon signature of governor (November 29, 2005).

II. CONSTITUTIONAL AMENDMENTS

Of the (14) **proposed constitutional amendments** filed for consideration during the 2005 First Extraordinary Session, the following (2) **constitutional amendments will be submitted to the voters** at the election to be held on **April 29, 2006**:

1. Dupre (SB 27)

Act No. 69

Changes name of the Wetlands Conservation and Restoration Fund to the Coastal Protection and Restoration Fund, and provides that federal funds received by the state generated from Outer Continental Shelf oil and gas activity shall be used for the purposes of coastal protection and shall be deposited and credited by the treasurer to the Coastal Protection and Restoration Fund.

Further specifies that Act 513 of the 2005 Regular Session (a previously proposed constitutional amendment regarding dedication of the first \$600 million received by the state in each fiscal year from oil and gas activity on the Outer Continental Shelf) is repealed, the amendment to the constitution proposed in such Act is withdrawn, and the secretary of state is ordered not to include the proposition contained in that Act on the ballot for the next statewide election.

(Amends Art. VII, Sec. 10(D)(2)(e), 10.2 and 10.5(B) and (C); repeals Act 513 of 2005 R.S.)

2. Alario (HB 34)

Act No. 70

Provides that **any person** entitled to the **special assessment level** who is unable to occupy the homestead on or before Dec. 31 of a future calendar year due to damage of the homestead caused by a gubernatorial declared disaster or emergency shall be entitled to keep the special assessment level provided the homestead is reoccupied by the owner within 5 years from Dec. 31 of the year following the disaster.

Provides that **any homestead** receiving the **homestead exemption** that is damaged during a gubernatorial declared disaster or emergency whose owner is unable to reoccupy the homestead on or before Dec. 31 of the year the property is damaged shall be entitled to keep the exemption by filing an annual affidavit of intent to reoccupy the homestead within 5 years.

(Adds Const. Art. VII, §§18(G)(5) and 20(A)(10))